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Opinion Committee

Office of the Attorney General  
Opinions Committee Division  
P.O. Box 12548  
Austin, TX 78711-2548

Dear General Morales:

I have been requested by Bill Zachary, Justice of the Peace of Precinct Two, Erath County, Texas, to inquire as to the lawfulness of the disproportionate sizes of the two different Justice of the Peace districts in Erath County.

Essentially, one Justice of the Peace district (Precinct Two) includes the City of Dublin and surrounding area, and the other Justice of the Peace (Precinct One) includes the remainder of the county. The differential is such that Precinct One is approximately three times the geographical size and population of Precinct Two.

The question presented is, "should the geographic size and population of Justice of the Peace Precincts in a county be as equal as is reasonable?"

Accompanying this request is a brief of the law involved.

Very truly yours,



Phil Nichols  
Erath County Attorney

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## BRLEF

Issue: "Should the geographical size and population of the Justice of the Peace Precincts in a county be as equal as is reasonable?"

Facts: Erath County has two Justices of the Peace. One is three times larger in size and population than the other. Notice that September 1, 1991, the Federal Census results are to apply to the counties for purposes of redistricting.

There are at least three lines of analysis:

(1.) The United States Constitution and the Texas Constitution guarantee equal protection, and

(2.) The Texas constitution demands apportionment "for the convenience of the people."

(3.) The Voting Rights Act of 1965, 79 Stat. 437, as amended in 1982, 42 U.S.C. Sec 1973.

### (1.) EQUAL PROTECTION

The most compelling argument is equal protection. U.S. Constitution Amendment 14; Texas Constitution Article 1, Section 3. The issue has not been directly addressed with respect to justices of the of the peace, but with respect to commissioner's precincts in counties, is the issue is crystal clear: the equal protection clause forbids the election of local government officials, including members of the commissioner's courts, from districts of disparate size which would require districts to be of equal population, *Avery v. Midland County*, 390 U.S. 474, 88 S. Ct. 114 (1968), 430 S.W.2d 487 (Tex. on remand 1968). The Fourteenth Amendment's mandate of Equal Protection extends to county commissioners. Because the *Avery* case is addressed to local government officials, there is no reason to believe that the rule in *Avery* does not extend to justices of the peace. Also, our Texas Constitution guarantees that "All free men...have equal rights, and no...set of men...is entitled to exclusive separate public involvements, or privileges," Tex. Const., Art. 1, Sec. 3.

Seemingly both the national and state constitution require justices of the peace to have districts of populations as equal as is reasonable.

### (2) "Convenience of the People"

The scheme of the number of justices of the peace in Texas Counties is governed by Article 5, Section 18 of the Texas Constitution. Interestingly, each strata of population which

phrase "for the convenience of the people." Tex. Const. Art. 5, Sec. 18 (c). In no way is a scheme of having one court thrice as large as another going to be "for the convenience of the people." Unless the precincts are as equal in size both geographically and in population as is reasonable, the convenience of the people is not served.

Only by having precincts as equal in geographical size and population is the convenience of the people served.

### (3) Voting Rights Act

The recent decision in *Houston Lawyers' Association v. Attorney General of Texas*, \_\_\_\_\_ U.S. \_\_\_\_\_, 111 S. Ct. 2376 (1991), held that judges are subject to Section 2 of the voting rights Act. In order to prevent minority dilution the mandate of the courts should be to reasonably equalize both geographic and population sizes of justices of the peace before any racial discrimination occurs.

### Conclusion

Both equal protection clause under the national and state constitution and the "convenience of the people" under the state constitution would require precincts for justices of the peace to be as reasonably equal in geographic size and population as can be.

Respectfully submitted,



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